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Honorable Paul G. Gardephe
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

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June 6, 2016

MEMO ENDORSED

The Application is granted.

SO ORDERED:

Paul G. Gardephe, U.S.D.J.

Dated:

June 10, 2016

June 27, 2016

Re: Creighton v. City of New York, et al.
12-CV-07454 (PGG)(DCF)

Honorable Judge Gardephe:

We represent plaintiff, Kenneth Creighton, in the instant matter. This letter is submitted, after a telephone conversation with Ms. Tara Worth, in order to provide to the Court further details in support of plaintiff's request for an extension of time to serve expert exchanges. This letter is submitted on consent of defendants.

As the Court is aware, the parties were to complete discovery by May 26, 2016. The depositions were actually completed on May 29, 2016 at 7:00 p.m. in order to accommodate defendant, Birns', schedule as he could not appear to complete his deposition prior to that date. As we explained in our previous letter dated June 2, 2016, although we have requested expedited transcripts, we have still not received all of the deposition transcripts. In light of these developments, the Court has extended the time for filing dispositive motions to August 1, 2016.

Per Your Honor's Order, we were to complete expert disclosures by today, June 6, 2016. We have spoken with our police procedures expert who as previously noted, is prepared to review the case and assist plaintiff, however, he must have all depositions transcripts in order to perform a thorough evaluation and issue an acceptable report under the FRCP.

When we spoke to plaintiff's police procedures expert last week, he advised that he was in the middle of another significant file review, which was to be followed with the preparation of a report. Upon learning that in addition to reviewing the extensive documents produced during discovery he will have to review and analyze approximately eight deposition transcripts, some of which are in excess of 400 pages, he stated he would need five weeks to complete the work he is presently doing and then review the discovery in this case and issue a report suitable for an Expert Exchange under the FRCP; hence our prior application.

Upon learning from Ms. Worth of the Court's position on our application and the necessity to provide further details concerning the need for the subject extension, we placed a follow-up call to our expert today to ask if he could possibly shorten the time he needs to complete his analysis

and issue a report. Our expert indicated that although it would be very difficult to complete the work he is presently doing and review the vast amount of deposition transcripts in this case and analyze the testimonies contained therein, compare them to the documents produced by defendants and write a report in less than five weeks, he would do his best to complete the review and issue his report within three weeks from today.

Again, we understand the need to move this case forward to its conclusion and we are working as diligently as possible towards that end. For the same reasons that defense counsel stated in defendants' request for an extension for the filing of dispositive motions, that discovery was only recently completed and the deposition transcripts have not all been transcribed, plaintiff is unable to exchange the required expert report by today, June 6, 2016.

Clearly, plaintiff could not obtain an analysis of the evidence or a report from the expert prior to discovery being completed. Moreover, without reviewing all the deposition transcripts, which have still not been fully transcribed, the expert cannot render a fully-informed opinion. Finally, the expert's schedule is beyond plaintiff's control. While the expert is working with plaintiff's counsel to expedite his review of the case and write a report, he cannot do so in less than three weeks. Therefore, we respectfully urge the Court's understanding and ask that this application be granted.

Respectfully submitted,

/s/

Richard Gross

cc : Kevin Thadani (via ECF)